

Application No. 09/937,238
Paper Dated: February 20, 2004
In Reply to USPTO Correspondence of October 21, 2003
Attorney Docket No. 702-011472

REMARKS

The Office Action of October 21, 2003 has been reviewed and the Examiner's comments carefully considered. The present Amendment modifies claims 12-21 in accordance with the originally-filed application. Claims 12-21 remain in this application.

The Examiner has rejected claims 13-19 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner indicates that claims 13-19 are confusing because they depended from independent claim 14. The Examiner previously renumbered the claims, and the dependencies should have been modified accordingly. Therefore, all of claims 13-19 have been amended to depend from independent claim 12, as originally intended. Accordingly, the foregoing Amendment cures the noted deficiencies and overcomes the Examiner's Section 112, second paragraph, rejections. Withdrawal of these rejections is respectfully requested.

Claims 12-14 and 16-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,759,472 to Strenger. Further, claims 12, 13, 15, 17 and 19-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,964,515 to Heyden. In view of the foregoing amendments and the following remarks, Applicant respectfully requests reconsideration of these rejections.

Independent claim 12 of the present application, as amended, is directed to a package of flexible material which has been formed into an envelope and includes an access opening, which is closed by means of a seal formed by bonding together two or more contacting layers of the material in a particular area. The package can be opened by pulling apart two bonded-together layers of material in the area, and the flexible material is provided with a pull

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engagement portion. The pull engagement portion is positioned in a part of the package configured to envelop the packaged product. The seal extends the width of the package and is directed inwardly and downwardly toward the pull engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the pull engagement portion.

Independent claim 20 of the present application, as amended, is directed to a method for producing a package of flexible material. Two or more contacting layers of the material are bonded together in a particular area, in such a manner that the package can be opened by pulling apart two bonded layers of material in the area by engaging the flexible material at the location of a pull engagement portion. The pull engagement portion is positioned on the part of the package configured to envelop the packaged product. The seal extends the width of the package and is directed inwardly and downwardly toward the pull engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the pull engagement portion.

Independent claim 21 of the present application, as amended, is directed to a method for packaging a product. The product is enveloped with a flexible material, and two or more contacting layers of the material are bonded together in a particular area in such a manner that the package can be opened by pulling apart two bonded layers of material in the area by engaging the flexible material at the location of a pull engagement portion. The pull engagement portion is positioned in the part of the package enveloping the packaged product. The seal extends the width of the package and is directed inwardly and downwardly toward the pull engagement portion and a bottom of the package, such that a central portion of the edge of the seal is immediately adjacent the pull engagement portion.

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The Strenger patent is directed to a container having a pressure-rupturable seal for dispensing contents. When pressurized, a weakly-sealed area 25, having a U-shaped configuration, ruptures and allows access of the liquid in the container or packet 10 to the unsealed chamber 26 and out the mouth of the container 10. See Fig. 1. Other than the mouth, the many walls and boundaries of the container 10 have permanently sealed areas 20. The package may be provided with optional leg portions 28 extending from the seal area 25 and overlapped by the permanently sealed areas 20 to create a stronger seal. See Fig. 2. Accordingly, it is this weakly sealed area 25, which is directed to the base or center of the packet 10, that is pressurized open to allow liquid to be extracted through the unsealed chamber 26.

The Heyden patent is directed to a bag construction including an easy-open provision. A container or bag 10 includes a top seal 24 and a bottom and side margins. A compartment 38 for containing the material is defined by a top seal 24 and a bottom seal 26. A pocket 40 is defined on the bag and offset from the side margin 36 of the top seal. Pocket walls 42 and 44 define the pocket and are freely separable. Using pocket mouth 46, an elongated object, such as a person's finger, may be inserted into the pocket for initiating the opening of the bag. Therefore, by using the pocket 40 (or flaps), the seal 24 may be separated. Each embodiment illustrated in Figs. 1-7 of the Heyden patent includes this pocket.

With respect to the Strenger patent, the container 10 does not include an engagement portion positioned in the part of the package configured to envelope the packaged product, as specifically set forth in all of independent claims 12, 20 and 21 of the present application. Still further, the seal 25 of the container 10 of the Strenger patent does not extend the width of the package, also as specifically set forth in all of the independent claims 12, 20 and 21 of the present application. Therefore, the Strenger patent does not and cannot anticipate the

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independent claims of the present application.

Still further, it should be noted that the structure of the container 10 of the Strenger patent is very different than the structure of the present invention, and the container of the Strenger patent specifically includes permanently sealed areas 20, such that liquid may only be expelled from the package 10 through the chamber 26. Accordingly, it would be very difficult to grasp the package 10 of the Strenger patent in an engagement portion located on the portion of the package that is intended to envelope the product. As set forth in all of the independent claims 12, 20 and 21 of the present application, the engagement portion is a “pull engagement portion,” which indicates that a user must be able to grasp the sidewalls of the container in the area of the engagement portion and pull the package apart. Such an action is virtually impossible to accomplish with the container of the Strenger patent, which specifically relies on pressure or “pushing” the container walls in order to rupture the weakly sealed area 25 to allow liquid in the container or packet 10 to flow through the unsealed chamber 26 and out the mouth of the container 10. Therefore, the Strenger patent actually teaches away from the structure and operation of the container of the present invention.

With respect to the Heyden patent, the present invention includes further distinguishing features. The engagement portion of the bag 18 of the Heyden patent specifically includes a pocket 40 defined by pocket walls 42 and 44 and having a pocket mouth 46. A person needs to insert their finger and open the bag 18 using this pocket 40. Therefore, the Heyden patent also teaches away from the present invention for the reasons discussed in the previously-filed Amendment, dated August 25, 2003, with respect to Figs. 3, 4 and 7-10 of the present application and the previously-cited Hopkins patent. All of the prior art, including the Heyden patent, include the use of “flaps” or some other engagement portion that is not positioned in the

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part of the package configured to envelope the packaged product. Each and every one of independent claims 12, 20 and 21 specifically recite that the engagement portion is positioned in the part of the package that is configured or does indeed envelop the packaged product. Accordingly, the Heyden patent does not anticipate the independent claims of the present application.

For all of the above reasons, the Strenger patent does not teach or suggest a container that includes a pull engagement portion positioned in the part of the package configured to envelop the packaged product, and having a seal that extends the width of the package, as specifically set forth in independent claims 12, 20 and 21 of the present application. In addition, the Heyden patent does not teach or suggest a container having a pull engagement portion positioned in the part of the package configured to envelop the packaged product, as specifically set forth in all of independent claims 12, 20 and 21 of the present application. It is the ability to grasp the engagement portion of the container of the present invention and to pull this engagement portion to open the package, together with the various other structural distinguishing features, that provide the present invention with its novel and non-obvious characteristics and advantages over the prior art. For these reasons, independent claims 12, 20 and 21 are not anticipated by or rendered obvious over the Strenger patent, the Heyden patent or any of the prior art of record, whether used alone or in combination. There is no hint or suggestion in any of the references cited by the Examiner to combine these references in a manner which would render the invention, as claimed, obvious. Reconsideration of the rejection of independent claims 12, 20 and 21 is respectfully requested.

Claims 13-19 depend directly from and add further limitations to independent claim 12 and are believed to be allowable for the reasons discussed hereinabove in connection

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with independent claim 12.

For all the foregoing reasons, Applicant believes that claims 12-21, as amended, are patentable over the cited prior art and in condition for allowance. Reconsideration of the rejections and allowance of all pending claims 12-21 are respectfully requested.

Respectfully submitted,

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